



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
DIRECTIVE**

DIRECTIVE NUMBER
235

DISTRIBUTION DATE
October 1, 1998

1. **SUBJECT: EMERGENCY RELIEF FOR COMPLAINANTS IN EMPLOYMENT CASES**

2. **PURPOSE:** To set forth the procedures for obtaining a Temporary Restraining Order (TRO) or preliminary injunction in employment complaints warranting emergency relief.

3. **BACKGROUND:** Government Code section 12974 provides that, prior to the completion of an investigation and final determination in a case, **where probable cause exists to prove a violation of the Fair Employment and Housing Act (FEHA)**, the Department may bring an action in Superior Court to enjoin a respondent from taking a proposed adverse action. Such relief temporarily prevents a threatened action (e.g., termination) and is designed to preserve the status quo until the final determination in a case. The need for injunctive relief is also particularly important in situations involving complainants who have terminal illnesses (such as AIDS or certain forms of cancer) and whose prognosis is such that they may not survive until the conclusion of the normal administrative process and, therefore, may be subjected to irreparable harm.

4. **PROCEDURES:**

A. **General:**

When a court grants emergency relief in the form of a Temporary Restraining Order (TRO) or preliminary injunction, it acts temporarily to prevent some threatened action until the case is finally resolved. There are special conditions that the court requires before granting a TRO. These considerations are summarized as follows:

1) Reasonable Likelihood of Success:

The party seeking a restraining order must show that he/she has a reasonable likelihood of winning on the merits of the case when it is litigated.

2) Status Quo

TROs are meant to maintain the status quo. They are issued to keep things as they are or to stop a threatened action in order to preserve the complainant's ability to obtain a remedy at a later time.

3) Irreparable Harm

It must be shown that unless the TRO is issued, irreparable harm, a harm that cannot be compensated for with money, will result. The loss of use, possession, or ownership of a piece of property will almost always be seen by a court as a unique loss that cannot be compensated for in another manner. The loss of a job may be seen as a loss which can be compensated for with money and, therefore, is not irreparable. However, in situations involving persons with terminal illnesses threatened with termination, who may not survive the administrative process, the harm may be irreparable if continued employment is denied.

For additional information, refer to Attachment 1 - "Injunctive Relief Guidelines."

B. Process:

Most cases that warrant emergency relief will appear as such at the intake stage. Where a complainant's statements at this stage indicate emergency relief may be appropriate, the following steps should be taken:

- 1) The Consultant should immediately contact the respondent by telephone to explore a quick resolution of the matter and, failing that, get additional information about the case.
- 2) A decision should be made by the District Administrator as to whether the situation meets the guidelines for seeking preliminary relief.
- 3) Where the decision by the District Administrator, with the concurrence of the Regional Administrator, is that the complaint is appropriate for emergency relief, the case will immediately be referred to the Chief Counsel.

5. **APPROVAL:**

Nancy C. Gutierrez, Director

Date

EMERGENCY RELIEF GUIDELINES

In the area of employment, the following categories of cases should be considered for emergency (injunctive) relief. Three elements are necessary: likelihood of success, preservation of the status quo, and irreparable harm.

1. **THREATENED LOSS OF JOB OR TRANSFER:**

A. **Reasonable Likelihood of Success**

The Department must be able to prove that we are likely to win the case at hearing.

B. **Status Quo**

The Department is acting to preserve the status quo. For example, a complainant with AIDS has been threatened with termination because of concerns the company has about the illness being spread to other employees. Here, an injunction can maintain the status quo (i.e., the job) and the facts clearly present a violation of our statute.

C. **Irreparable Harm:**

An important consideration in employment cases must be that the harm is such that an award of back pay or other benefits at a later time will not fully compensate the complainant for his/her losses. For instance, a complainant with a terminal illness, whose prognosis is such that he/she might not survive the normal administrative process, is subjected to irreparable harm if denied continuing employment.

2. **CHANGE IN CONDITION OF EMPLOYMENT**

There are other occasions when a Temporary Restraining Order (TRO) should be requested such as a change in a condition of employment that is clearly discriminatory.

A. **Reasonable Likelihood of Success**

The Department must be able to prove that we are likely to win the case at hearing.

B. **Status Quo**

The Department is preserving the status quo. For instance, the Department was granted a TRO where an employer planned to require waitresses to wear revealing costumes which could be seen as sex

discrimination. The action was brought before the costume change occurred.

C. **Irreparable Harm**

The harm must be such that it could not be remedied by damages at a later time.